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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 1st October 2013

No. 11836—IR(I.D.)-133/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th August 2013 in Industrial Dispute Case No. 21 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of Director of Horticulture, Odisha Udyan Bhawan, I.R.C. Village, Nayapalli Bhubaneswar (2). The Horticulturist, Cuttack and their workman Shri Rabindra Kumar Swain was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 21 OF 2012

The 29th August 2013

Present :

Shri P. K. Ray, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

- | | | |
|---|----|------------------------|
| The Management of | .. | First Party—Management |
| 1. The Director of Horticulture,
Odisha Udyan Bhawan, I.R.C. Village,
Nayapalli, Bhubaneswar. | | |
| 2. The Horticulturist, Cuttack,
At/P.O. Nayabazar, Gosala Road, Cuttack. | | |

And

Its Workmen,	..	Second Party—Workman
Shri Rabindra Kumar Swain, S/o Late Gajendra Swain, At. Barahipur, P.O. Osanga, P.S. Mahanga, Dist. Cuttack.		

Appearances :

For the First Party—Management	. .	Shri R. N. Baliarsingh, Auth. Rept.
For the Second Party—Workman himself	. .	Shri R. K. Swain

AWARD

This case has been instituted u/s 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the Act) on a reference made by the Labour & ESI Department of the Government of Odisha u/s 12 (5) of the Act vide its letter No. 3593—IR(ID)-133/2011-LESI., dated the 8th May 2012 with the following Schedule :—

“Whether the services of Shri Rabindra Kumar Swain, Casual Labour working since 1997 in Barahipur Transit Nursery, Mahanga, Cuttack needs to be regularized by the Director of Horticulture, Odisha, Bhubaneswar and Horticulturise, Cuttack ? If so, what relief the workman Shri Swain is entitled to ?”

2. The claim of the second party workman is that he was engaged as a casual labourer by the Horticulturist, Cuttack in the year 1997 in Barahipur Transit Nursery at Mahanga, Cuttack. Being satisfied with his service the first party management No. 2 recommended his case to the first party management No. 1 for regularisation of his service against some vacant posts like Gardener, Grafter but the first party management No. 1 slept over the matter. Hence, he raised the dispute basing on which this reference has been made for adjudication.

3. The first party management in their joint written statement has stated that service of the second party workman who was a casual labourer working in Barahipur Transit Nursery, Mahanga, Cuttack cannot be regularised as he does not fulfill the criteria for the posts which are lying vacant in the department. Further, it is stated that the departments belong to the Government of Odisha without having any motive to gain profit. They relate mostly breeding, watering, sowing, poly pack feeding including agricultural operations which do not fall under the purview of Industrial Disputes Act. The second party workman has been engaged throughout the year except on lean season. Hence challenges the maintainability of the case.

4. In the aforesaid premises, the issues framed are as follows :

ISSUES

- (i) Whether the first party is in Industry ?
- (ii) Whether the service of Shri Rabindra Kumar Swain, Casual Labour working since 1997 in Barahipur Transit Nursery, Mahanga, Cuttack needs to be regularized by the Director of Horticulture, Odisha, Bhubaneswar and Horticulturise, Cuttack ?
- (iii) If so, what relief the workman Shri Swain is entitled to ?

5. In support of their respective claim while the second party workman examined himself and filed documents marked Exts. 1 to 3, the first party management examined Dy. Director, Horticulture as M.W. No. 1 and filed document marked Ext. A.

6. *Issue No. 1*—The second party workman while claiming the first party management as an Industry and himself as workman and the dispute as industrial dispute, the stand of the first party management is that it relates mostly breeding, watering, sowing including agricultural operation having no motive for any gain or profit, thus it is not an industry under the Industrial Disputes Act, 1947. In the case of Bangalore Water Supply and Sewerage Board Vrs. A. Rajappa, reported in 1978 (2) SCC 213, their lordships of the Hon'ble Supreme Court have discussed the definition of Industry, evaluated the triple test which are as follows :

“(a) Where (i) systematic activity, (ii) organised by co-operation between employer and employee the direct and substantial element is commercial, (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale, or *prasad* or (food), *prima facie*, there is an “industry” in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint private or other sector.

(c) The true focus in functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking.”

The Horticulture Department as stated by the first party management deals with activity of plantation satisfy the triple test as evaluated by the Hon'ble Supreme Court in the Bangalore Water Supply case (*supra*), hence is an 'Industry'.

7. *Issue No. (2)*—Admittedly the second party workman is a casual labourer working since 1997 in Barahipur Transit Nursery, Mahanga, Cuttack at intervals. The first party management in course of evidence during the cross-examination has admitted that the second party workman has worked continuously for a period of 240 days prior to the dispute raised by the second party workman in the year 2011. But he has stated that he terminated his service as per the Government Circular vide Ext. A. On behalf of the second party workman reference has been made to the decision reported in 1987(55) FLR 842(Daily Rated Casual Labour Employed under P&T Deptt. through Bharatiya Dak Tar Mazdoor Manch Vrs. Union of India and others), wherein their Lordships of the Hon'ble Supreme Court have held as follows :

“xx It is against this background that we say that non-regularisation of temporary employees or casual labour for a long period is not a wise policy. We, therefore, direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department. Xx.”

Further, on behalf of the second party workman reference has been made to another decision of the Hon'ble Supreme Court, reported in AIR 2010 SC 2587 (State of Karnataka and others Vrs. M.L. Kesari and others) wherein their Lordships of the Hon'ble Supreme Court have held thus :

“The object behind the said direction in para 53 of Umadevi (AIR 2006S 1896:2006 AIR SCW 1991, Para 44) is two-fold. First is to ensure that those who have put more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi 2006 AIR SCW 1991 was rendered are considered for regularisation in view of their long service. Second is to ensure that the departments/Instrumentalities do not perpetuate the practice of employing persons on daily wage/adhoc/casual for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees the right to be considered for regularisation in terms of the above directions in Umadevi as a one-time measure.”

In view of the aforesaid principle since the second party workman has been working since 1997 and due to his sincerity his case has been recommended by the first party management No. 2 for regularisation of his service his claim deserves consideration.

9. *Issue No. 3*—In view of the finding on issue No. 2, since there is basis for claiming regularisation of the service of the workman, the first party management is directed to consider his claim as per the principle decided by the Hon'ble Supreme Court in the aforementioned decisions [supra] within a period of three months hence.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
16-8-2013
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. K. RAY
16-8-2013
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
J. DALANAYAK
Under-Secretary to Government